

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLARENCE PENDERGRASS, JR.,

Plaintiff,

No. CIV S-05-0728 DFL GGH P

vs.

R.C.C.C., et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

On January 9, 2006, defendant Barnes filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b) and 12(b)(6). While plaintiff has filed several pleadings since that time, none of these documents may be construed as an opposition to defendant's motion.

Local Rule 78-230(m) provides in part: "Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion" On October 27, 2005, plaintiff was advised of the requirements for filing an opposition to a motion to dismiss and that failure to oppose such a motion may be deemed a waiver of opposition to the motion.

Accordingly, plaintiff's failure to oppose should be deemed a waiver of opposition to the granting of the motion. In the alternative, the court has reviewed the motion and finds that it has merit. IT IS HEREBY RECOMMENDED that:

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2 1. Defendant Barnes' motion to dismiss filed January 9, 2006, be granted; and

3 2. This action be dismissed.

4 These findings and recommendations are submitted to the United States District
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
6 days after being served with these findings and recommendations, any party may file written
7 objections with the court and serve a copy on all parties. Such a document should be captioned
8 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
9 shall be served and filed within ten days after service of the objections. The parties are advised
10 that failure to file objections within the specified time may waive the right to appeal the District
11 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12 DATED: 3/6/06

13 /s/ Gregory G. Hollows

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GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

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